

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on Post ECS )  
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Docket No. C-99-1

**COALITION AGAINST UNFAIR USPS COMPETITION  
OPPOSITION TO POSTAL SERVICE  
MOTION FOR PARTIAL RECONSIDERATION  
(June 18, 1999)**

On May 25, 1999, the Presiding Officer issued P. O. Ruling No. C-99-1/2. That ruling sets out the procedural schedule and proposed Special Rules of Practice for this proceeding. On June 8, 1999, the Postal Service filed a Motion for Partial Reconsideration of P.O. Ruling No. C-99-1/2. Intervenor Coalition Against Unfair USPS Competition (CAUUC) opposes this motion. The Postal Service by its motion is clearly trying to frustrate the complaint process of the Commission. This attempt must be denied.

**LIMITS ON THE SCOPE OF THE PROCEEDING  
WILL DESTROY SUBCHAPTER II COMPLAINTS**

The goal of the Postal Service is not surprising. It wants the Postal Service to render a recommended decision on whether Post ECS is a postal service. This would permit the Postal Service to reject the recommended decision and end this case. The Commission was confronted with this situation in a case filed by CAUUC in 1996, Complaint, C96-1. It wisely issued a declaratory order on the issue of whether packaging was a postal service rather than a recommended decision. As the Postal Service itself states:

“The Governors have refused to concede that the Commission’s complaint authority extends to inquiries on the status of nonpostal service, and the Postal Service emphasizes unequivocally that is its position here. See Decision of the Governors...” Motion at fn.3 at 3.

So the Postal Service wants a limitation on scope and a recommended decision which it can then reject. This is not what Congress intended in setting up the complaint process. In fact, it intended just the opposite by specifying that rate and classification matters under Subchapter II be subject to a recommended decision just as in a traditional rate case. Specifically the statute states:

“Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title...may lodge a complaint with the Postal Rate Commission. ..If the Commission, in a matter covered by Subchapter II of this chapter, determines the complaint to be justified it shall after proceedings in conformity with section 3624 of this title issue a recommended decision...” 39 USC 3662.

The statute is clear on this point and calls for a recommended decision, but what is such a recommended decision? That is defined by Section 3624 which defines a recommended decision as an on the record proceeding with written direct testimony, a prehearing conference, and discovery. 39 USC 3622 (b). This is just what has been provided in P. O.1/2 in this case. Instead, the Postal Service wishes to circumvent this orderly process required by the statute by calling for a recommended decision solely on the issue of whether Post ECS is a postal service so the Governors can reject that decision.

If the Commission adopted the proposal by the Postal Service as a general proposition, each complaint under Subchapter II could and most likely would end the same way. In any case in which the Commission issues a recommended decision that a complaint is justified, the Postal Service would reject that decision and end the case. Congress cannot and did not intend this to be the result of a process by which the public could seek redress from an agency required to provide universal mail service to all Americans. To do so, would render these complaints

meaningless and destroy the Subchapter II complaint process.

**THE COMPLAINT PROCESS IS CRITICAL  
TO PROTECTING THE PUBLIC AND  
PRESERVING UNIVERSAL MAIL SERVICE**

Without a viable complaint process, only the Postal Service can initiate a rate proceeding 39 USC 3622. The Postal Service would run roughshod over the rate process by beginning any number of postal services under a “nonpostal” guise to avoid the rate process entirely. The Postal Service has already attempted to do this once in the case of Pack and Send. The Commission wisely prevented this from occurring in that complaint through its Declaratory Order. See Declaratory Order Finding Complaint to be Justified and Providing for Further Proceedings. Order No. 1145, Dec. 16, 1996. By so acting, the Commission rendered the correct decision under the complaint provision of the statute, and ultimately the Postal Service submitted a rate and classification request upon which the Commission issued a recommended decision. See Opinion and Recommended Decision, Provisional Packaging Service, MC97-5, March 31, 1998.

**CONCLUSION**

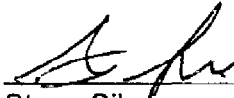
The Commission has correctly determined to hold proceedings in conformity with 39 USC 3624. The Postal Service is attempting to frustrate the orderly consideration of this matter by moving for partial reconsideration and requesting a recommended decision on the limited issue of whether Post ECS is a postal service. If successful, the Postal Service would undoubtedly reject any recommended decision by the Commission finding Post ECS to be a postal service thus ending the case.

Such a result would be an egregious transformation of the complaint process unintended by the statute and would effectively end the complaint process for Subchapter II matters. The Commission must deny the Postal Service Motion for Reconsideration and continue the case under its current procedural schedule .

Respectfully submitted,

COALITION AGAINST UNFAIR USPS COMPETITION

By its attorneys:

A handwritten signature in black ink, appearing to read 'Steve Silver', is written over a horizontal line.

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June 18, 1999

## CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

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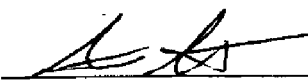
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